IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5400 of 1998

with

SPECIAL CIVIL APPLICATION No 8088 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

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4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

JIVANLAL PRITILAL C/O RAMESH R THAKUR

Versus

JASHODABEN BABUBHAI PARMAR

Appearance:

1. Special Civil Application No. 5400 of 1998

MR AK CLERK for Petitioner

MR GM JOSHI for Respondent No. 1 to 12

MR CHUDGAR for NANAVATI ASSOCIATES for Resp.No. 13

2. Special Civil ApplicationNo 8088 of 1998

MR CHUDGAR for NANAVATI ASSOCIATES for Petitioner

MR GM JOSHI for Respondents Nos.1 to 12

MR AK CLERK for Respondent No.13

CORAM : MR.JUSTICE H.L.GOKHALE
Date of decision: 14/10/98

ORAL JUDGEMENT

Special Civil Application No.5400 of 1998 is filed by one Shri Jivanlal Pritilal who claims to be a labour contractor working under M/s. Maneklal Harilal Mill No.1 situated at Saraspur, Ahmedabad. Special Civil Application No.8088 of 1998 is filed by the said Mill Company. Both these petitions seek to challenge the interim order passed by the learned Judge of the Labour Court at Ahmedabad below interim application (Exhibit 2) in Application No.579 of 1997 and the order passed by the Industrial Court in Revision Applications Nos. 5 and 6 of 1998 confirming that order. Mr.Clerk has appeared for aforesaid Jivanlal Pritilal (hereinafter referred to as the Contractor) and Mr.Chudgar has appeared for the Mill Company (hereinafter referred to as the Mill Company). Mr.G.M.Joshi has appeared for 12 lady employees who are respondents Nos.1 to 12 in both these matters.

2. The facts leading to these petitions are as follows: The said Mill Company is a cotton textile mill, the employer-employee relations under which are governed under the Bombay Industrial Relations Act, 1946 (hereinafter referred to as BIR Act, 1946). Respondents Nos.1 to 12 have filed Application No.579 of 1997 under Sections 78 & 79 of the said Act before the learned Labour Court Judge at Ahmedabad, wherein they have prayed for a declaration that they may be declared as employees of the Mill Company. The said prayer has been justified by contending that they have been working in the said Mill Company continuously for years together. They were engaged in the Mending Department and were required to work from 8 a.m. to 4.30 p.m. This mending work was done inside the premises of the Mill Company and that it was an essential work for the purposes of the principal activities of the said employer. In an exhibit annexed to the Application, they mentioned the years in which they have joined in the said Mill Company. The names and the dates given in the annexure are as follows:

Sr. No.	Name of the employee	Year of joining
1	Jasodaben Babubhai	1994
2	Kashiben Baldevbhai	1993
3	Narmadaben Dahyabhai	1992

4 Ilaben Jagdishbhai 1992
5 Kamlaben Dineshbhai 1994
6 Madhuben Naranbhai 1994
7 Jamnaben Rajendrabhai 1994
8 Jayaben MIlanbhai 1994
9 Leelaben Raghunath 1994
10 Meenaben Jitendrabhai 1993
11 Bhanuben Ramanlal 1993
12 Rekhaben Rajubhai 1996

In that Aplication, it is stated in paragraph 3 that after the cloth is manufactured, it is brought to the mending section for mending the same i.e. to remove defects, if any. Thereafter, the cloth is sent further to other sections for bleaching, finishing etc. They have also stated in paragraph 5 that they are not working in place of any other employee as 'badli' and the work that was done was of a perennial nature. It is further stated in paragraph 5 that they were paid only Rs.30/per day. It is stated in paragraphs 3 & 4 that the employees concerned are entitled to identity cards, privilege leave, pay slips and other necessary documents, but none of them are being given the same and a bogus labour contractor namely Shri Jivanlal Pritilal has been put up between the management and these employees as their employer.

3. In this principal proceeding, the 12 lady employees prayed for interim relief by filing another application (Exhibit 2) under Section 119-D of the BIR Act 1946. In that exhibit 2, it was submitted that, on 1.9.1997 and thereafter on 25.9.1997, the Factory Inspector visited the premises of the Mill Company and found a variety of irregularities. The Factory Inspector met the employees and because they narrated their grievances to him, the employees namely Jashodaben Babubhai Parmar and others were threatened by the concerned Section Officer Mr.Bhujwala of the Mill Company that their services will be terminated. This cause of action led to the interim application wherein they prayed that they should not be restrained from entering in the factory premises nor should the company be permitted to change their work. After examining interim application and hearing the learned advocate for the employees, the learned Judge of the Labour Court passed ad-interim order on 1.10.1997 as sought by the employees. It has come on record that when that notice was sought to be served on the Mill Company, Shri R.M.Shah, Assistant Labour Officer on duty recorded thereon that he had received the notice at 5.30 p.m. on 1.10.1997. He recorded that two out of the 12 ladies were not reporting for work for quite some

time and the other ten had not reported on duty on that day and hence there is no occasion for an interim injunction, though whatever was status quo on that day would be maintained.

4. The Mill Company pleaded by its common reply dated 7.10.1997 to the principal application as well as interim application that the employees concerned were engaged through the above-referred contractor and that the principal employer had no responsibility towards the liabilities on account of the workers so engaged. In paragraph 13 of the reply it is stated in the last two lines as follows: "It is not true as claimed by the applicants that the Factory Inspector had come for visit at our place. Actually, the Factory Inspector had seen the attendance cards of the contractor Shri Jivanlal Pritilal and had signed thereon". In paragraph 11 it was disputed that such persons concerned were engaged for years together and in paragraph 12 it was denied that mending process was a part of production. The Mill Company also denied in paragraph 12 that the workers concerned were entitled to photocard, attendance card and card showing privilege leave etc. It is material to note that in this reply, it is nowhere stated that the employees concerned were terminated by the contractor at any point of time or that they were not permitted to enter the Mill Company as instructed by the contractor.

5. Inasmuch as the ladies were not permitted to join on duty (in spite of the court order), an application was filed before the court (Exhibit 8) on 10.10.1997 complaining breach of the interim order and praying for appointing a Commissioner to visit the place of work. Therefore, a Commissioner was appointed to find out as to what was the position. The Commissioner's report was taken on record at Exh.11. The Commissioner has reported that he visited the Mill Company on 17.10.1997, he saw the lady employees waiting to report for duty in the morning at 7.45 a.m.. He also found that the mending department was very much working and Sarvashree Kamalsingh, Amarnath and Joitaram were on duty. The employees on duty stated that they were not given identity cards. The Commissioner recorded that the lady employees present were not permitted to join.

6. The Mill Company produced some documents on 11.12.1997. They were as follows:-

(1) Photocopy of the Licence issued to Contractor Shri Jivanlal Pritilal under the Contract Labour (Regulation and Abolition) Act, 1972.

(2) Photocopy of Attendance Sheet maintained by the Contractor for the month of July 1997.

(3) Photocopy of the Attendance Sheet maintained by the Contractor for the month of August 1997.

(4) Photocopy of the Attendance Sheet maintained by the Contractor for the month of September 1997.

(5) Photocopy of the Attendance Sheet maintained by the Contractor for the month of October 1997.

(6) Photoopy of the Agreement entered into between the Contractor and the petitioner.

7. In view of the plea of the Mill Company that the employees concerned were the employees of the contractor, an application was filed by the employees to join the contractor as respondent and he was thereupon joined in the said proceeding. The learned advocate appearing for the Mill Company has filed his Vakalatnama on behalf of the contractor on 4.2.1998 which is at Exh.23 in the Labour Court. Thereafter, the contractor has filed a reply which came to be marked as Exh.25. In this reply, for the first time, respondent No.2 pleaded in para 8 that these lady employees were performing works of mending saree-buttas and that they were given only such work which was temporary. They were engaged only for one month. They were not doing any other work. It was further stated therein as follows: "It is the submission of respondent No.2 that though this court has passed order for maintaining status quo, before receiving that order, the very workers were relieved from their services since no work was available. Presently, only 15 persons are engaged by me since the work available is less". Here again, what is material to note is that no such relieving order is produced.

8. The learned Judge thereafter heard the Advocates, and in view of this report of the Commissioner as well as the documentary material produced before him, he allowed the interim application and confirmed the ad-interim injunction by his order dated 24.3.1998.

9. Being aggrieved by that interim order, two Revision Applications were filed under Section 84 of the B.I.R. Act being Revision Application Nos. 5 and 6 of 1998. Various arguments on facts and law were advanced before the learned Judge of the Industrial Court. The learned Member of the Industrial Court by his order dated

12.5.1998 confirmed the interim order passed by the learned Labour Court Judge and dismissed the Revision Applications. In para 3 of his operative order, the learned Judge directed the two Revision Applicants to compensate the employees for not permitting them to report on duty from 2.10.1997 to 30.4.1998.

10. When Special Civil Application No.5400 of 1998 came before this court first on 10.7.1998, Pandit J. issued a notice stating that matter will be finally heard on returnable date. Subsequently, the second petition, namely Special Civil Application No.8088 of 1998 was filed by the Mill Company and both were directed to be heard together. When the matters were heard on 22.9.1998 before me, it was noted that both the orders passed by the learned Judge of the Labour Court and the Industrial Tribunal had remained undisturbed for over a year and no actions had been taken either by the Mill Company or by the Contractor to comply therewith. It was seen that necessary documents were not produced by both of them in defence in the courts below and therefore to give them one more opportunity the matter was adjourned to 6.10.1998 on a condition that the wages of 12 employees upto the end of September 1998 be deposited in this court. They were calculated at the rate of Rs.30/- per day for the work of 26 days in a month i.e. Rs.780/- per month per employee. Thus, an amount of Rs.1,12,320/- was subsequently deposited for twelve employees in this court whereafter this matter has been heard finally before me. Before the matter was heard further, I asked the learned Counsel for both the petitioners as to whether they were ready to take back the employees (may be even without prejudice), but on instructions they have declined to agree. They were also asked as to whether in view of the ensuing Diwali, they were agreeable to release at least half of the amount that is deposited in this court, but they have declined to agree to this arrangement also.

11. RULE is issued on both these matters and is made returnable forthwith. Pleadings are already complete inasmuch as reply has been filed by Mr.Joshi and further affidavits have been filed by the contractor. All the learned Counsel have made their submissions before me.

12. Mr.Clerk, learned Counsel appearing for the contractor submitted that this was a case where there was a jurisdictional error on the part of the learned Judge of the Labour Court. He submitted that the workers concerned were terminated from their services and since they were so terminated, the kind of order that was passed by the learned Judge of the Labour Court could not

have been passed. He submitted that by the reply filed by the contractor (filed some times after 4.2.1998 as stated above), it was pleaded that their services were terminated and therefore the employees have also subsequently filed separate Applications to challenge their terminations. Mr.Clerk, therefore, relied upon a judgment of the Supreme Court in the case of MANAGEMENT OF NILPUR TEA ESTATE v. STATE OF ASSAM reported in AIR 1996 SC 737 to contend that, in view of the fact of termination of services of the workmen, the application for challenging termination will have to be decided first and until then no such order granting interim injunction or the consequential order of appropriate compensation or wages as passed by the Industrial Court could be passed. Mr.Clerk submitted that the learned Judge of the Labour Court was in error in granting interim relief which amounted to granting full relief. He submitted that the Industrial Court has erred in directing payment of the amounts which ought not to have been done. In this behalf Mr.Clerk relied upon the judgment of the Supreme Court in the case of DELHI CLOTH & GENERAL MILLS CO. LTD. v. RAMESHWAR DAYAL reported in 1961 SC 689 to contend that reinstatement cannot be granted by way of interim relief. He as well relied upon the judgment of the Supreme Court in the case of BANK OF MAHARASHTRA v. RACE SHIPPING reported in AIR 1995 SC 1368 to submit that grant of interim relief which practically gives the principal relief is deprecated. Mr.Clerk relied upon the judgment of the Supreme Court in the case of HIMACHAL PRADESH HOUSING BOARD V. OM PAL & OTHERS reported in AIR 1997 SC 2685 to submit that validity of termination order will have to be decided first before which other application cannot be proceeded with in fact leading to a grant of reinstatement.

13. Mr.Chudgar, learned Counsel for the Mill Company has submitted that the kind of order which was passed by the learned Judge of the Labour Court amounted to granting mandatory relief and in the facts of the present case, the kind of mandatory order that was passed could not have been issued. He relied upon the judgment of the Supreme Court in the case of DORAB CAWASJI WARDEN v. COOMI SORAB WARDEN reported in AIR 1990 SC 867 to submit that the relief of interlocutory mandatory injunction is granted to preserve or restore the status quo of the last non-contested status which preceded the pending controversy. The submission of Mr.Chudgar is that the lady employees have been terminated from their services from 30.9.1997 and that being the position, the ad-interim relief which was granted on 1.10.1997 could not have been confirmed when this was subsequently

brought to the notice of the learned Judge. Mr.Chudgar pressed into service the observations made in para 24 and 25 of the above judgment which govern grant of mandatory injunction. Mr.Chudgar also relied upon judgment reported in 1996 Labour & Industrial Cases 885 in the case of BHANMATI TAPUBHAI MULIYA v. STATE OF GUJARAT to submit that just on the last day, an order of status quo was not expected to be passed. That judgment in the case of BHANMATI (supra) was in a situation where the employee concerned had been appointed on ad-hoc basis in State service and just before the period of service was to expire, on the last day she had sought injunction.

14. Mr.Joshi learned Counsel appearing for the workmen concerned submitted on the other hand that both the orders passed by the courts below were perfectly justified in the facts and circumstances of the case. Mr.Joshi submitted that the only record which was produced before the Labour Court consisted of photocopies of attendance sheets for the month of July, August, September and October 1997. It is relevant to note that they were produced by the Mill Company along with its list of documents and not by the contractor. These attendance sheets for four months, if seen closely, show that the names of the employees during each of all these four months are altogether different. It is also seen that the handwriting is also quite different on each sheet. There is nobody's signature on any of the sheets. The names of ten out of that twelve lady employees appear in the attendance sheet of September 1997. Mr. Joshi submitted that, whereas these photocopies were produced on 11.12.1997 (much after the ad-interim order of the Labour Court dated 1.10.1997), the contractor claims to have given an advertisement in Daily Sandesh dated 27.7.1998 stating that on 24.7.1998 while travelling in an autorikshaw he had lost the entire record consisting of salary sheets, diary and other registers which were being carried in a green clothbag. Mr.Joshi, therefore, submits that, in any case, when the learned Judge of the Labour Court as well as the Industrial Court were seized of the matter, as per their own say the contractor as well as the Mill Company had the relevant records. If that was so, nothing prevented them from producing it before the courts below. Mr.Joshi submitted that it was very much the case of the employees concerned right from the beginning that they were employed under the Mill Company right from 1992. Now, if some other employees were being engaged or what these employees were saying was false, nothing prevented the management from showing the relevant record.

15. It is relevant to note that in the licence under the Contract Labour (Regulation & Abolition) Act, 1970 produced by the Mill Company with respect to this contractor, it is stated that the licence has been initially issued on 18.6.1993. That is recorded in para 6 of the Industrial Court order. In that licence it is also recorded that the contractor had taken the licence to engage 16 workmen. If the 12 ladies were contractor's employees and if the management could produce photocopies of the payment sheets of the months of July to October 1997, in the submission of Mr.Joshi, the management as well as the contractor could have produced the relevant record which they are required to maintain under the above-referred Contractor Labour (Regulation & Abolition) Act. Section 29 (1) of the said Act requires the principal employer and every contractor to maintain such records and registers giving particulars of the contract labour employed, nature of work performed by the contract labour, rates of wages paid to the contract labour and such other particulars in such form as may be prescribed. The rules under the Act require the contractor to issue employment card within 3 days of employment and to maintain Muster Roll, Wage Register, Deduction Register and Overtime Register. If they are employees of the Mills, then also under the B.I.R. Act and the Textile Standing Orders, the employees are to be issued passes and the employer has to maintain various registers. Mr.Joshi showed me a copy of Factory Inspector's report of 26.8.1992 which showed largescale violations of all legal requirements by this contractor. It is also relevant to note in this behalf that before the Industrial Court it was canvassed that under the Standing Orders there were many protective measures concerning employees and specific submissions are recorded in para 13.1 of the judgment. In either case there has to be the necessary record. It is pertinent to note that the fact that such record of the contractor is lost is stated on affidavit for the first time in this court on 12.10.1998. Mr.Joshi, therefore, submits that this story of the record being lost is a clear afterthought and that at no point of time any such record ever existed on the basis of which the management or the contractor could contend that the employees were never employed earlier other than the period of 30 days as claimed by them.

16. Admittedly, the employees concerned were being given Rs.30/- per day which is far less than the minimum wage. It is true that labour is very cheap in our country and is available in abundance. It is, therefore, only to protect them that various such enactments and provisions have been made. The Contract Labour

(Regulation & Abolition) Act 1970 has undoubtedly brought about much desired improvement. As far as B.I.R. Act is concerned, the definitions of "employee" and "employer" have always been very clear to include the employees engaged by contractor. The employees under the BIR Act had the protective mechanism inbuilt in the Act much prior to the enactment of the Contract Labour (Regulation & Abolition) Act. Mr.Joshi, therefore, submits that the management having produced no documentary evidence worth reliance, the learned Judge of the Labour Court as well as the Industrial Court had no option but to discard the stand taken by the contractor that the employees concerned were engaged only for 30 days whereafter they were terminated. The learned Judge of the Industrial Court has dealt with the kind of record which the management has produced and this can be seen from the discussions in para 14 of the judgment.

17. Mr.Joshi in this behalf relied upon the judgment of the Supreme Court in the case of RAGHAVAMMA v. CHENCHAMMA reported in AIR 1964 SC 136 to contend that when all the relevant documents admitted to have been in existence were not placed before the court by the party concerned, an adverse inference has to be drawn against such party. The submission of Mr.Joshi is well taken. In fact, way back in HIRALAL v. BADKULAL reported in AIR 1953 SC 225 relying upon an earlier judgment of Privy Council reported in AIR 1917 PC, the Hon.'ble Supreme Court explained the rational behind this approach which is inbuilt in Section 106 of the Evidence Act also.

The Court observed:-

" A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties this may be right enough - they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is in their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

In H.D.SINGH v. RESERVE BANK reported in AIR 1986 SC 132, the workmen claimed to have worked for more than 240 days in 12 months but bank failed to produce the record

in defence. The Supreme Court held that 'in the absence of any evidence to the contrary' the Court had necessarily to draw the inference that the workmen's case was true. Thus, faced with a situation where the workers were contending that they were employed right from 1992 and when the management failed to produce any material in defence, the learned Judges below were perfectly justified in drawing the inferences that they have drawn.

18. With respect to the submission of Mr.Clerk that when an application to challenge termination is filed, the Judges ought not to have granted interim relief, Mr.Joshi submitted that neither in the Labour Court nor in the Industrial Court this submission was canvassed in this manner. It is for the first time in this court that it was being canvassed that because Applications to challenge termination are filed subsequently, interim relief on the interim application should not have been granted. Mr.Joshi submits that if a plea was not taken at the very point of time when it ought to have been taken, the party will have to be treated as given it up or waived. In any case, Mr.Joshi submits that the courts below cannot be faulted for the approach that they have taken.

19. Mr.Joshi submits that the original application filed was fully competent and maintainable under the B.I.R. Act. Way back in the case of STATE OF BOMBAY v. MAHARASHTRA SUGAR MILLS LTD. reported in AIR 1951 BOMBAY 68 a Division Bench of the Bombay High Court (Coram: Chagla C.J. and Gajendragadkar, J.) had held under their judgments that the definition of employee is correlated with the definition of employer under the BIR Act and reading the two sub-sections together, the position is that when there is an owner of an undertaking and that owner of the undertaking does not employ labour directly, but enters into a contract with a contractor and the contractor supplies the necessary labour for the purpose of the undertaking of the owner, then the persons so employed or recruited or supplied by the contractor are as much the employees of the owner of the undertaking as if the owner had directly employed them. That view of the Division Bench of the Bombay High Court has been confirmed by the Hon.'ble Supreme Court in the case of MAHARASHTRA SUGAR MILLS LTD. v. STATE OF BOMBAY reported in (1951) Bombay Law Reporter page 1003. There have been a series of judgments thereafter on this point. In fact, in AHMEDABAD MFG. & CALICO PTG. CO. v. RANTAHEL (AIR 1972 SC 1598), the employees concerned were engaged as coolies by a Gardening Contractor, and the Supreme Court held that for being covered under the

definition of 'employee', the person concerned need not necessarily be connected with the main industry. In SARASPUR MILL LTD. v. RAMANLAL (AIR 1973 SC 2297), employees engaged in a canteen run by a cooperative society in the Mill were held to be employees of the Mill Company. Therefore, the original application was very much maintainable and interim relief could always be granted. The same approach is reflected in the Supreme Court judgment in HUSSAINBHAI v. THE ALATH FACTORY TEZHILALI UNION reported in AIR 1978 SC 1410 where the court has observed that by lifting the veil the real relationship must be seen. The approach to be taken with respect to the contract labour is indicated in Supreme Court's leading judgment in AIR INDIA case (AIR 1977 SC 645). The main proceeding was, therefore, fully competent.

20. With respect to interim relief, Mr.Joshi relies upon the principles laid down by the Supreme Court in the case of DALPATKUMAR v. PRAHLAD SINGH reported in (1992) 1 Supreme Court Cases 719. In para 5 thereof it is held that for seeking interim relief one is required to show a prima facie case, irreparable injury and balance of convenience. In the present case, undoubtedly, there has been a prima facie case and irreparable injury and the balance of convenience was also undoubtedly in favour of the workmen. Mr.Joshi submits that the principles in the above-referred subsequent judgment of the Supreme Court in the case of DORAB CAWASJI WARDEN v. COOMI SORAB WARDEN reported in AIR 1990 SC 867 could not be read in any other manner in the facts of the present case.

21. There is one more aspect of this matter. It is sought to be contended in the reply of the contractor that the lady employees were engaged only for Butta Cutting and since that work was not available, they could not be engaged any further. In this behalf, if one looks to the work awarded to the contractor, there are some eight different activities which the Mill Company had awarded to the contractor to execute. It has nowhere been pleaded either by the Mill Company or by the contractor that these activities were so specialized that separate class of employees were required to be engaged. It is also material to note that the lady employees were paid only Rs.30/- per day which is even not the minimum wage for unskilled labour under the Minimum Wages Act. It is also contended that there is a fine distinction between loop- cutting and butta cutting. This submission with respect to these lowly paid employees is shocking to say the least.

22. I have considered these rival submissions. It is apparent that the management has failed to defend the interim application before the learned Labour Court Judge and on the date on which either the Labour Court Judge or the Industrial Court decided the matter, the plea that the employees were already terminated was not pressed into service. In that view of the matter, the courts below were bound to look into the application in the way it was filed. When any plaint or application is presented, the court has to see the application as it is. This being the position merely because a reply is filed much later in February 1998 by the Contractor claiming termination and if that plea is also not pressed into service, the order by the learned Labour Court Judge and the Industrial Court could not be faulted. In this view of the matter, there is no need to intervene by this court any further and these two orders will have to be held as correct as on the date on which they were passed. As observed by the Hon.'ble Supreme Court in D.P.MAHESHWARI v. DELHI ADMINISTRATION in AIR 1984 SC 153, such interference under Article 226 of the Constitution of India is likely to break the resistance of workmen.

23. The fact, however, remains that as far as this court is concerned, now that it is pointed out that the Applications to challenge the termination had been filed subsequently, some appropriate arrangement will become necessary. Mr.Clerk and Mr.Chudgar submit that now when the plea with respect to termination is pressed into service that will have to be decided first. Mr.Joshi submits that the subsequent cases are without prejudice to the earlier and only consequential. Whether the subsequent applications are to be decided first or Application No.5790 of 1997 filed earlier should be decided first, this court cannot ignore both the substantive applications. The evidence in both the matters will be by and large common. Hence, it will be proper that both these proceedings ought to be heard together. It would also be desirable that the proceedings in the Labour Court be decided expeditiously. Pending disposal thereof, the further operation of both the orders will have to be kept in abeyance. This is without saying in any way that those orders are erroneous. However, as stated above, since the plea with respect to termination has also to be decided, it would be proper that till disposal of the proceeding, further enforcement of the impugned orders should remain in abeyance.

24. During the pendency of these cases, the employees

will have to be protected. Mr.Joshi submits that the amount deposited in the court be released to them. Mr. Clerk and Mr.Chudgar oppose this request. Mr.Joshi states that as per Commissioner's report, the employees had reported for duty on 17th October 1997 and were not entertained inside. Mr.Joshi has also brought on record the letters which were sent to the lady employees by the contractor on 27.6.1998 directing them to report on duty. With respect to these letters, an affidavit is filed by the contractor wherein it is stated in para 2 & 4 that these letters were issued due to insistence of the Mill Company and the employees were offered work in mending section but they could not execute the work in that section and hence started creating unrest and were required to sit idle and that stage continued upto 30.8.1998. Mr.Joshi, therefore, submits that admittedly there is evidence and admission to show that workers were reporting for duty in October 1997 and July & August 1998.

25. As stated above, it is clear that in the month of October 1997, the employees concerned were waiting outside the gate when they were turned out. This position must have continued thereafter. Mr.Joshi submits that they are entitled to full wages thereafter as directed by the Industrial Court and in any case when they were called for duty in June 1997 the so-called termination did not survive. It is also on record that the employees were not taken on duty for two months in July & August 1998. As far as all these three months are concerned, the workers will be eligible for full wages in any case.

26. From the record which is annexed to the application it is seen that various lady employees had joined this Company from 1992 onwards. If they were subsequently terminated on 30.9.1997, even on that footing, they will be entitled to re

compensation, notice pay and gratuity. Thus, the 12 lady employees will be eligible to claim gratuity, notice pay and retrenchment compensation as shown in the table below. The amounts due to them are calculated at the rate of Rs.30/- per day and 26 days work in a month i.e. Rs.720/- per month.

Sr. No.	Name of employee	continuous years of service completed upto	Wages for Oct.97, July & Aug. 98	Retrench- ment com- pensation	Gratuity	Notice Pay	Total

		30.9.97	780x3				
1	Jasodaben	4	2340	780 x 2 =1560	-	780	4680
2	Kashiben	5	2340	780x2.5 =1950	780x2.5 =1950	780	7020
3	Narmadaben	7	2340	780x3.5 =2730	780x3.5 =2730	780	8580
4	Ilaben	7	2340	780x3.5 =2730	780x3.5 =2730	780	8580
5	Kamalaben	4	2340	780x2 =1560	-	780	4680
6	Madhuben	4	2340	780x2 =1560	-	780	4680
7	Jamnaben	4	2340	780x2 =1560	-	780	4680
8	Jayaben	4	2340	780x2 =1560	-	780	4680
9	Leelaben	4	2340	780x2 =1560	-	780	4680
10	Meenaben	5	2340	780x2.5 =1950	780x2.5 =1950	780	7020
11	Bhanuben	5	2340	780x2.5 =1950	780x2.5 = 1950	780	7020
12	Rekhaben	2	2340	780x1 =780	-	780	3900
	Total	Rs. 70,200					

27. Thus, the amounts mentioned in the table are admittedly due to the 12 lady employees. The same will be paid to them under the order of court as interim ad-hoc payment. Mr.Joshi states that they will receive it as payment of unpaid wages. That will be so for the months of October 1997, July and August 1998. The rest of the amount will in any case be due to them under the particular heads even if they are held to be validly terminated. Thus, releasing these amounts will not cause

prejudice to the management, and their release is certainly not release of the entire amount or equivalent to full relief.

28. In the circumstances, although I find no error in the two orders passed, the further enforcement of these two orders will remain in abeyance. The Labour Court is directed to dispose of Application No.579 of 1997 and Application No.29 of 1998 (together with other such applications) as expeditiously as possible and in any case by the end of December 1998. Till then, the enforcement of the impugned orders will remain stayed. In the event the Mill Company and the Contractor succeed, naturally they will not be required to pay anything. In the event the workers succeed, all the wages from 1.10.1997 will become payable to them minus the amount paid. The petition is therefore entertained only in part as stated above. The Registrar will act on this order and issue cheques to these 12 lady employees of the amounts as mentioned in the table. The remaining amount will be transferred to the Labour Court at Ahmedabad and the learned Judge of the Labour Court will invest it in a fixed deposit for three months to begin with. It is clarified that both the parties will not seek unnecessary adjournments and in the event the decision gets prolonged for any reason, it would be open for the parties from making necessary applications. When the learned Judge of the Labour Court proceeds to decide the applications, he is expected to decide them on merits without being influenced by any of the observations made in this judgment or the orders passed by the courts below. The petition is disposed of accordingly with no order as to costs. Rule is made absolute to the aforesaid extent only. Mr.Chudgar and Mr.Clerk request for suspending this order. That request is rejected.

(KMG Thilake)
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